

The Retailers' Occupation Tax Act, 35 ILCS 120/1 et seq. imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. (This is a PLR.)

October 30, 2006

Dear Xxxxx:

This letter is in response to your letter dated May 24, 2006, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.1120. You may access our website at www.tax.illinois.gov to review regulations, letter rulings and other types of information relevant to your inquiry.

Review of your request disclosed that all the information described in paragraphs 1 through 8 of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to ABC for the issue or issues presented in this ruling, and is subject to the provisions of subsection (e) of Section 1200.110 governing expiration of Private Letter Rulings. Issuance of this ruling is conditioned upon the understanding that neither ABC nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request. In your letter you have stated and made inquiry as follows:

This letter is to request a private letter ruling from the Illinois Department of Revenue pursuant to §1200.110 of the Illinois Department of Revenue Regulations.

Statement of Facts

ABC is a STATE limited liability company that has been formed to engage in the portable container moving and storage business under the brand name NAME.

ABC operates through independent dealers that are located throughout the United States. Each ABC dealer owns or leases its own portable storage containers (which are marked with the 'NAME' service mark) and delivery equipment, and either owns or subcontracts for warehouse storage space. Each dealer enters into a Dealer Agreement with ABC whereby the dealer agrees to provide containers for use by ABC customers and to deliver, transport and store those containers upon instruction from ABC.

ABC contracts directly with its customers for container services, booking all customer orders for containers, associated delivery and storage services and other incidentals through its central CITY/STATE-based call center. ABC then coordinates with its dealers to have the dealers deliver and pick up containers for customers and store containers at the dealers' warehouse locations. ABC handles nearly all payments, collections and customer service issues, and pays the NAME dealers transaction-based commissions for their services. In a few cases, the NAME dealers handle customer payments and collections, but those are the exception rather than the rule.

ABC enters into a Rental Agreement with each of its customers which provides that the customer is renting a container from ABC, and that ABC will arrange for the delivery of the container to a location designated by the customer (such as a residence) and/or the storage of the container at a dealer's location (either in an indoor warehouse or on an outside fenced lot) and/or the transportation of the container to a new location. (Initially, ABC will provide only local and intrastate transportation of the containers to its customers, although eventually ABC plans to expand into interstate operations.) The customer may also choose to purchase from ABC a damage waiver that limits the customer's liability to ABC for damage to the container, or to rent and/or purchase from ABC a variety of packing supplies and equipment, all as detailed further below.

ABC is using XYZ software to help it calculate, collect and report sales tax on its customer transactions. The following describes the various XYZ categories under which ABC has classified each of ABC's various products and services, as well as XYZ's classification of each category as either 'taxable' or 'exempt' under your state's laws.

Request for a Private Letter Ruling. We respectfully request that you provide to us a ruling on whether XYZ's classification of each of ABC's enumerated sales of goods, services and/or other intangibles is proper under your state's sales tax laws. The request affects the current tax period, and there is no audit or litigation pending with the Department. To the best of my knowledge, the Department has not previously ruled on these issues for ABC and neither ABC nor any predecessor has submitted these issues to the Department for a ruling.

A. Transportation Charges

1. Initial Delivery Charge: This is a charge for the delivery of the empty container to a customer's location. We have classified this service in the XYZ system as 'Tangible Personal Property/Goods - Delivery Charges - Common Carrier - FOB Destination' which is defined as set forth below and which XYZ has classified as 'exempt' in your state.

TANGIBLE PERSONAL PROPERTY/GOODS - DELIVERY CHARGES - COMMON CARRIER - FOB DESTINATION: A shipping charge for the delivery by a common carrier of tangible personal property from the seller to the purchaser. This charge appears separately on the seller's invoice and payment is remitted directly to the seller. The FOB destination point is the purchaser's location. Title will generally transfer at the FOB point, although documentation should be maintained to clearly identify transfer of title and shipping terms.

2. **Move to New Location**: This is a charge for a local move from a customer's initial location point to another customer-designated location point. We have classified this service in the XYZ system as 'Transportation Services - Freight' which is defined as set forth below and which XYZ has classified as 'exempt' in your state.

TRANSPORTATION SERVICES - FREIGHT. A common or contract carrier's separately stated charge for the delivery of tangible personal property that is not associated with the sale of tangible personal property.

3. **Move to Warehouse**: This includes the pick up of a full container from a customer's location and the transportation of the container to a ABC dealer's inside or outside warehouse space for storage. We have classified this service in the XYZ system as 'Transportation Services - Freight' which is defined as set forth below and which XYZ has classified as 'exempt' in your state.

TRANSPORTATION SERVICES - FREIGHT. A common or contract carrier's separately stated charge for the delivery of tangible personal property that is not associated with the sale of tangible personal property.

4. **Move from Warehouse to New Location**: This is a charge for the pick up of a full container from a ABC dealer's inside or outside warehouse space and the delivery of the container to a customer's location. We have classified this service in the XYZ system as 'Transportation Services - Freight' which is defined as set forth below and which XYZ has classified as 'exempt' in your state.

TRANSPORTATION SERVICES - FREIGHT. A common or contract carrier's separately stated charge for the delivery of tangible personal property that is not associated with the sale of tangible personal property.

5. **Final Pick-Up Charge**: This is a charge for the pick up of an empty container from a customer location. We have classified this service in the XYZ system as 'Tangible Personal Property/Goods - Delivery Charges - Common Carrier - FOB Destination' which is defined as set forth below and which XYZ has classified as 'exempt' in your state.

TANGIBLE PERSONAL PROPERTY/GOODS - DELIVERY CHARGES - COMMON CARRIER - FOB DESTINATION: A shipping charge for the delivery by a common carrier of tangible personal property from the seller to the purchaser. This charge appears separately on the seller's invoice and payment is remitted directly to the seller. The FOB destination point is the purchaser's location. Title will generally transfer at the FOB point, although documentation should be maintained to clearly identify transfer of title and shipping terms.

6. **Additional Stop Charge**. This is a fee that is charged when a customer chooses to have a container delivered to multiple locations (i.e., first the customer's residence and second to a storage unit). We have classified this service in the XYZ system as 'Transportation Services - Freight' which is defined as set forth below and which XYZ has classified as 'exempt' in your state.

TRANSPORTATION SERVICES - FREIGHT. A common or contract carrier's separately stated charge for the delivery of tangible personal property that is not associated with the sale of tangible personal property.

7. **Non-Paved Surface Fee - Delivery/Pick-Up.** This is a fee that is charged because a customer has requested that an empty container be placed on and/or removed from a non-paved surface in connection with initial delivery or pick-up. We have classified this service in the XYZ system as 'Tangible Personal Property/Goods - Delivery Charges - Common Carrier - FOB Destination' which is defined as set forth below and which XYZ has classified as 'exempt' in your state.

TANGIBLE PERSONAL PROPERTY/GOODS - DELIVERY CHARGES - COMMON CARRIER - FOB DESTINATION: A shipping charge for the delivery by a common carrier of tangible personal property from the seller to the purchaser. This charge appears separately on the seller's invoice and payment is remitted directly to the seller. The FOB destination point is the purchaser's location. Title will generally transfer at the FOB point, although documentation should be maintained to clearly identify transfer of title and shipping term.

8. **Non-Paved Surface Fee - Transportation.** This is a fee that is charged because a customer has requested that an empty container be placed on and/or removed from a non-paved surface in connection with transportation of the loaded container from one location to another. We have classified this service in the XYZ system as 'Transportation Services - Freight' which is defined as set forth below and which XYZ has classified as 'exempt' in your state.

TRANSPORTATION SERVICES - FREIGHT. A common or contract carrier's separately stated charge for the delivery of tangible personal property that is not associated with the sale of tangible personal property.

B. Rental and Storage Charges

1. **Monthly Rental of Container:** This is the basic charge for the rental of the container by the customer and assumes that the container will be stored at the customer's location. We have classified this service in the XYZ system as the sale of 'Tangible Personal Property' which XYZ has classified as 'taxable' in your state.
2. **Monthly Storage Outside Warehouse:** This is an incremental addition to the base monthly rental fee for storage of the container at the dealer's location but outside of the dealer's warehouse. We have classified this service in the XYZ system as 'Business Services - Storage Services' which is defined as set forth below and which XYZ has classified as 'exempt' in your state:

BUSINESS SERVICES - STORAGE SERVICES. Charges associated with the storage of tangible personal property. The property could be any tangible personal property owned by an entity such as inventory, business records and excess furniture.

3. **Monthly Storage Inside Warehouse:** This is an incremental addition to base monthly rental fee for storage of the container at the dealer's location and inside the dealer's warehouse. We have classified this service in the XYZ system as 'Business

Services - Storage Services' which is defined as set forth below and which XYZ has classified as 'exempt' in your state.

BUSINESS SERVICES - STORAGE SERVICES. Charges associated with the storage of tangible personal property. The property could be any tangible personal property owned by an entity such as inventory, business records and excess furniture.

4. **Monthly Damage Waiver Rate:** This is an optional charge that provides to the customer a waiver of customer liability for certain damage that may occur to the container while it is being rented by the customer. We have classified this service in the XYZ system as 'Optional Maintenance Agreements and Extended Warranties' which is defined as set forth below and which XYZ has classified as 'exempt' in your state:

OPTIONAL MAINTENANCE AGREEMENTS AND EXTENDED WARRANTIES. An agreement that is offered, by a manufacturer or dealer, separately with the original purchase of an item. The agreement typically provides for the replacement of defective parts and repair labor, or labor only, covered by the agreement, for a period beginning after the expiration of a mandatory agreement. The customer has the option to decline the agreement and the charge is separately stated from the purchase price of the item.

5. **Container Cleaning Charge.** This is a contingent charge that will be billed to the customer only if the customer fails to properly clean out the container after using it. We have classified this service in the XYZ system as 'Facility Maintenance - Cleaning/Janitorial Services' which is defined as set forth below and which XYZ has classified as 'exempt' in your state:

FACILITY MAINTENANCE: CLEANING/JANITORIAL SERVICES. Charges associated with the routine cleaning of office spaces and buildings.

6. **Warehouse Access Fee:** This is a container handling charge that will be imposed if the customers need access to their belongings while the container is being stored at the dealer's warehouse facility. We have classified this service in the XYZ system as 'Business Services - Storage Services' which is defined as set forth below and which XYZ has classified as 'exempt' in your state.

BUSINESS SERVICES - STORAGE SERVICES. Charges associated with the storage of tangible personal property. The property could be any tangible personal property owned by an entity such as inventory business records and excess furniture.

7. **Reschedule/Cancellation Fee:** This is a fee that is charged when a customer changes or cancels the delivery or pick-up date for a container after the driver has already been dispatched. We have classified this service in the XYZ system as the sale of 'Tangible Personal Property' which XYZ has classified as 'taxable' in your state.

8. **Container Repair Services:** This is a fee for repair services that a customer must pay when a container is damaged while being rented by the customer and the damage is not covered by a damage waiver. We have classified this service in the XYZ

system as 'Repair of Tangible Personal Property' which is defined as set forth below and which XYZ has classified as 'exempt' in your state:

REPAIR OF TANGIBLE PERSONAL PROPERTY: Repair of tangible personal property includes a separately stated charge for labor necessary to restore the property to its original condition. If the charge for repair services includes the transfer of incidental parts or materials to the customer and no separate charge is made for part or materials, it is assumed that such parts or materials lose their identity w/hen used by a repairman and/or the value of such parts or materials is insubstantial, insignificant or inconsequential in amount to the charge.

C. Moving Supplies and Equipment

1. Miscellaneous Supplies for Sale: This includes various straps, locks, pads and other moving equipment that are sold through ABC's central call center, processed by a third party vendor and direct shipped to the customer. We have classified these items in the XYZ system as the 'Sale of Tangible Personal Property' which XYZ has Classified as 'taxable' in your state.

2. Dollies and Pads for Rent: This includes dollies and pads that are rented by ABC or a ABC dealer to a ABC customer for a limited period of time. We have classified this item in the XYZ system as the sale of 'Tangible Personal Property' which XYZ has classified as 'taxable' in your state.

DEPARTMENT'S RESPONSE

The Retailers' Occupation Tax is measured by gross receipts from retail sales of tangible personal property. Similarly, liability for the Service Occupation Tax is contingent upon the sale or transfer of tangible personal property incident to sales of service.

A. Transportation Charges: In regard to the following transportation charges: (1) Initial Delivery Charge; (2) Move to New Location; (3) Move to Warehouse; (4) Move from Warehouse to New Location; (5) Final Pick-Up Charge; (6) Additional Stop Charge; (7) Non-Paved Surface Fee – Delivery/Pick-Up and (8) Non-Paved Surface Fee – Transportation, based upon the information you have provided, no retail sale or sale or transfer of tangible personal property incident to a sale of service takes place. As a result, these charges are not subject to sales tax.

B. Rental and Storage Charges: The State of Illinois taxes leases differently for Retailers' Occupation Tax and Use Tax purposes than the majority of other states. Lessors of tangible personal property under true leases in Illinois are deemed end users of the property to be leased. See 86 Ill. Adm. Code 130.220. As end users of tangible personal property located in Illinois, lessors owe Use Tax on their cost price of such property. The State of Illinois imposes no tax on rental receipts. Consequently, lessees incur no tax liability.

In the case of a true lease, if your company is a lessor of the property being used in Illinois, your company would incur Use Tax obligations on the cost price of the leased property. As a lessor, you must either pay your supplier, if your supplier is registered to collect Illinois Use Tax, or self assess and remit the tax directly to the Department. If, as a lessor, you have already paid taxes in another state with respect to the acquisition of the tangible personal property, then you would be

exempt from Illinois Use Tax to the extent of the amount of such tax properly due and paid in such other state. See Subsection (a)(3) of 86 Ill. Adm. Code 150.310.

Please note that if the property being leased in Illinois is owned by an entity other than ABC, then that entity will owe any applicable Use Tax, rather than ABC.

In regard to the following rental and storage charges: (1) Monthly Rental of Container, (2) Monthly Storage Outside Warehouse, and (3) Monthly Storage Inside Warehouse, the State of Illinois imposes no tax on rental receipts. Therefore, even though you have classified the monthly rental of containers in (1), as "the sale of 'Tangible Personal Property,'" this service is not subject to sales tax in Illinois. The monthly storage charges for outside the warehouse (2) and inside the warehouse (3) are also not subject to sales tax.

The charges for (4) Monthly Damage Waiver Rate, (5) Container Cleaning Charge, (6) Warehouse Access Fee, (7) Reschedule/Cancellation Fee, and (8) Container Repair Services do not, according to the information provided in your letter, involve retail sales or the sale or transfer of tangible personal property incident to a sale of service. These charges are not subject to tax.

C. Moving Supplies and Equipment: The charges under (1) Miscellaneous Supplies for Sale, are for the retail sale of tangible personal property. These charges are subject to tax. The charges for (2) Dollies and Pads for Rent, do not involve retail sales or the sale or transfer of tangible personal property incident to a sale of service. These charges are not subject to Retailers' Occupation Tax. Please note, as stated above, that Use Tax is owed on tangible personal property used (in this case, leased) in this State (e.g. containers, dollies, pads, etc.).

The factual representations upon which this ruling is based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the factual representations recited in this ruling are correct and complete. This Private Letter Ruling is revoked and will cease to bind the Department 10 years after the date of this letter under the provisions of 2 Ill. Adm. Code 1200.110(e) or earlier if there is a pertinent change in statutory law, case law, rules or in the factual representations recited in this ruling.

If you have further questions concerning this Private Letter ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Martha P. Mote
Associate Counsel

MPM:msk